In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 847

ADRIAN LAWRENCE DUDLEY PETITIONER

v.

UNITED STATES OF AMERICA

No. 851

EUGENE FISHER LONDOS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals for the Fifth Circuit (Pet. 10–25)[1] is not yet reported.

[1] Petitioner Londos (No. 851, this Term) and petitioner Dudley (No. 847, this Term) each filed separate petitions in this case. However, the petitions are identical except for the fact that petitioner Dudley challenged the sufficiency of the evidence to convict him and petitioner Londos did not. For the sake of clarity, the Government will make page references only to the Dudley petition (No. 847).

JURISDICTION

The judgment of the Court of Appeals was entered on January 9, 1957 (Pet. 26). A petition for rehearing was denied on February 20, 1957. The petition for a writ of certiorari in No. 847 was filed on March 20, and in No. 851 on March 22, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether an indictment which charged that petitioners caused the transportation of a fraudulent security in foreign commerce "with unlawful and fraudulent intent" is insufficient because the word "willfully" does not precede the word "caused".

2. Whether the United States District Court for the Southern District of Texas had jurisdiction to try petitioners for the continuing offense of causing a fraudulent security to be transported in foreign commerce when the security was made in Mexico and subsequently transported to the Southern District of Texas.

3. Whether the evidence was sufficient to convict petitioner Dudley of causing the transportation of the fraudulent security in foreign commerce.

STATUTES INVOLVED

18 U. S. C. 2, as amended, provides in pertinent part:

* * * * *

> (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

The National Stolen Property Act, Sec. 2314, 62 Stat. 806, as amended, 18 U. S. C. 2314, provides in pertinent part:

* * * * *

> Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities, knowing the same to have been falsely made, forged, altered, or counterfeited; * * *
>
> * * * * *
>
> Shall be find not more than $10,000 or imprisoned not more than ten years, or both.

* * * * *

STATEMENT

On October 31, 1955, in the United States District Court for the Southern District of Texas, a two-count indictment was returned against the petitioners. Count I charged them with conspiring to cause one Ethel Turner to transport a fraudulent security in foreign commerce from Acapulco, Mexico, to Houston, Texas, in violation of 18 U. S. C. 371 (R. 2–7). Count II charged them with the substantive offense of causing the transportation of the same security in violation of 18 U. S. C. 2314 (R. 8). On March 21, 1956, the jury acquitted petitioners of the conspiracy charge, but found them guilty of the substantive offense charged in Count II (R. 342–343). They were each sentenced to prison for a term of 8 years and fined $5,000 (R. 367–370). The Court of Appeals for the Fifth Circuit unanimously affirmed (Pet. 10–25).

The evidence adduced at the trial may be summarized in pertinent part as follows:

Mrs. Turner met petitioner Dudley (alias Harry Marshall) in Acapulco, Mexico (R. 25–27). When the two were having breakfast together one morning, Dudley "found" a billfold under the table (R. 32). In it was $600, a $20,000 horse race ticket, and a letter from a Mr. O'Hara to Londos (alias George A. Holden) (R. 34). The letter warned Mr. Holden (Londos) not to let out any more information about his business or he would be fired, and explained he would get a second chance only because of the influence of his wealthy uncle (R. 35, 40, 58–59).

Mrs. Turner thought that perhaps Londos would give them the $600 as a reward (R. 36), and actually asked him for it (R. 41). He offered to take them to dinner, was refused, and then offered Mrs. Turner $100 (R. 42). After explaining to Mrs. Turner that he was a bet placer for a syndicate having knowledge in advance of winning horses (R. 38–40), Londos changed his mind about giving her $100 and decided to place the $600 on the horse to which the $20,000 bet related, which paid three-to-one and would net each of them $600 (R. 43). They "won" $1,800 which Dudley brought back in cash and showed to Mrs. Turner (R. 47-48). Mrs. Turner did not receive any of that money because Dudley put it on another "bet" (R. 50). Londos then decided to place a $100,000 bet in the name of "A. B. Marshall" and "C. D. Turner". He explained to Mrs. Turner, however, that his boss' signature should really be on the betting check as well as his own to constitute the proper security, but he hoped to be able to collect the winnings before the irregularity was noticed (R.

48–53). They did "win", and the amount of the "take" from the two bets was $203,600 (R. 53, 83).

Londos reported that, before they could collect the money, they would have to exhibit $100,000 to show that they could have paid the bet had they lost (R. 58). Dudley and Mrs. Turner agreed to help on condition they would share equally in the winnings (R. 63–65). Mrs. Turner flew to California and obtained $22,500 by obtaining loans against savings accounts (R. 74). She turned the money over to Dudley in the presence of Londos (R. 82). Dudley left and returned with a check for $203,600 which all three endorsed (R. 83–84). Before it could be "cashed" Dudley supposedly got in trouble with the police (R. 86–91), so they had to split up to escape. The credit of $203,600 was allegedly transferred to Houston, Texas, by the security described in Count II of the indictment (R. 91), a purported draft on the "United Turf Exchange" in Houston (R. 92). The three agreed to meet in Houston to cash the draft (R. 94). A discussion arose regarding who would carry the check. Dudley said he wanted to take it, but at Mrs. Turner's insistence Londos said, "O. K. let her keep it" (R. 92–93), and Mrs. Turner carried it to Houston (R. 98).

Shortly after Mrs. Turner arrived in Houston, Londos called her and delayed the appointment until the next day (R. 100). The next morning he called again and delayed the appointment for 60 days (R. 101–102). Mrs. Turner did not see the petitioners again until after they were arrested (R. 125–127).

ARGUMENT

1. Count II of the indictment, under which petitioners were convicted, charged that they "did with unlawful and fraudulent intent cause to be transported in foreign commerce from Acapulco, Mexico, to Houston, Texas, a falsely made, forged and counterfeit security * * * knowing the same to have been falsely made, forged, and counterfeited, "in violation of 18 U. S. C. 2314 (R. 7–8).

Petitioners' argue that this indictment is insufficient because it does not allege, as required by 18 U. S. C. 2 (b), as amended, that the causation was "willful".[2]

The allegation that petitioners "did with unlawful and fraudulent intent cause" the transportation was, however, the equivalent of an allegation that the causing was willfully done. *Howenstine* v. *United States,* 263 Fed. 1, 4 (C. A. 9); see also *Schultz* v. *United States,* 155 F. 2d 721, 722 (C. A. 9); *United States* v. *Handler,* 142 F. 2d 351, 354 (C. A. 2), certiorari denied, 323 U. S. 741; *Holsman* v. *United States,* 248 Fed. 193, 195 (C. A. 9), certiorari denied, *sub nom. Freeman* v. *United States,* 249 U. S. 600. Petitioners

[2] The requirement of "willful" causation was added by the Act of October 31, 1951 (Sec. 2 (b), 65 Stat. 717). S. Rep. No. 1020, 82nd Cong., 1st Sess. (reprinted in 1951 U. S. Code Cong. Serv. 2583), and reveals that the amendment as a whole was "intended to clarify and make certain the intent to punish aiders and abettors regardless of the fact that they may be incapable of committing the specific violation which they are charged to have aided or abetted." The insertion of the word "willfully", although not discussed, was undoubtedly intended to prevent the punishment of one who inadvertently caused an unlawful act to be done.

were informed that they were accused of intentionally causing Mrs. Turner to transport the check. And in the context of causation, "willfully" is clearly used in the sense of intentionally. *Browder* v. *United States*, 312 U. S. 335, 342; *McClanahan* v. *United States*, 230 F. 2d 919, 924 (C. A. 5), certiorari denied, 352 U. S. 824; *McBride* v. *United States*, 225 F. 2d 249, 253–255 (C. A. 5), certiorari denied, 350 U. S. 934.

2. Petitioners' contention that the United States District Court for the Southern District of Texas lacked jurisdiction to hear the case (Pet. 7), is sufficiently answered by 18 U. S. C. 3237, which provides:

> . . . . . .
>
> Any offense involving the use of the mails, or transportation in interstate or foreign commerce, is a continuing offense and, except as otherwise expressly provided by enactment of Congress, may be inquired of and prosecuted in any district from, through, or into which such commerce or mail matter moves.

The false security in this case was drawn on the "United Turf Exchange" of Houston, Texas (R. 92), and Mrs. Turner carried it to Houston (R. 98). Therefore, under 18 U. S. C. 3237, the offense was committed within the Houston Division of the Southern District of Texas, and that court had jurisdiction to try the offense. Cf. *Hyde* v. *United States*, 225 U. S. 347, 361–364; *Ramey and Linder* v. *United States*, 228 F. 2d 774 (C. A. 5).

3. Petitioner Londos does not challenge the sufficiency of the evidence (No. 851, this Term). Petitioner Dudley, however, contends that the evidence was insufficient to convict him of causing Mrs. Turner

to transport the fraudulent security in foreign commerce (Pet. 7–8, No. 847, this Term). He bases his assertion on the following testimony of Mrs. Turner (R. 92–93):

> A. Well, when Mr. Holden [Londos] got the check and Mr. Marshall [Dudley] looked at it and I looked at it and he said, "You don't have to worry a thing about it," and he put it on the chiffonier like and like that and then he says, "You don't have a thing to worry about; this is good as gold. They have to pay, you don't have to worry." He says, "If they didn't, this will be good in any courts; don't worry about it." Because I sort of looked worried he says, "You don't have to worry a thing about it." Then we started to discuss who was going to handle this and Mr. Marshall [Dudley] said he wants to keep it; I says, "Oh, no, I want to keep it. After all, what have I got to show? Nothing." I said, "I am going to keep it."
>
> So Mr. Marshall [Dudley] still insisted, so I raised my voice. I says, "Oh, no, I wouldn't stand for it. I am going to keep it."
>
> Mr. Holden [Londos] says, "O. K. let her keep it." Then he says, "Remember, take care of it and you be in Houston like I told you to. If you are not, I am going to chase you all over."
>
> And I says, "You don't have to chase me, Mr. Holden [Londos]. I give you my address. You have got my home address. I will be in Houston, just as I told you I will."

The gist of the offense is the causing of the transportation of the fraudulent security, not the par-

ticular agent for the transportation. The document was drawn on a purported institution in Houston. Thus, its transportation from Mexico to Houston was certainly well within the contemplation of both defendants and, therefore, a transportation caused by them. *Pereira* v. *United States,* 347 U. S. 1, 9.

Petitioner Dudley's expressed desire to keep the check could well have been found by the jury to be a calculated maneuver to assure Mrs. Turner of the validity of the check. His "permission" for her to take it to Houston was a means of keeping her from becoming suspicious before they made good their escape. Mrs. Turner testified at the trial that she would have called the police if she had not been allowed to carry the check (R. 185). By giving her the check and hurrying her off to Houston to reassure her trust in them, petitioners caused the transportation of the check.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petitions for writs of certiorari should be denied.

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